

2008 Oct 10 PM 12:02

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

(G63425/gn)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 08-11888
)	
Eric M. McCrann	)	Chapter 13 Proceedings
Amy N. McCrann aka Amy Nicole Holcomb)	
	)	Judge Pat E. Morgenstern-Clarren
Debtor(s))	
	)	<u>MOTION OF CREDIT</u>
	)	<u>ACCEPTANCE</u>
	)	<u>CORPORATION ASSIGNEE</u>
	)	<u>OF TRI COUNTY CARS INC.</u>
	)	<u>FOR RELIEF FROM STAY</u>

Credit Acceptance Corporation assignee of Tri County Cars Inc., (the “Movant”) moves this Court, under Sections 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the “Bankruptcy Code”) and under Rules 4001, 6007 and other rules of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for an Order conditioning, modifying or dissolving the automatic stay imposed by Section 362 of the Bankruptcy Code. In support of this Motion, the Movant states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. Sections 157 and 1334. This is a core proceeding under 28 U.S.C. Section 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. Sections 1408 and 1409.

2. On July 12, 2007, the Debtor(s) listed above (collectively, the “Debtor”) obtained a loan from Tri County Cars Inc. in the amount of \$9,771.75. Such loan was evidenced by a Retail Installment dated July 12, 2007 (the “Note”), a copy of which is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, the Debtor executed a Security Agreement dated July 12, 2007 (the “Security Agreement”). The Security Agreement granted a lien on the personal property listed as **1999 Chevrolet Truck S10** (the “Collateral”) owned by the Debtor, and more fully described in the Security Agreement.

4. The lien created by the Security Agreement was duly perfected by:

The filing of the Security Agreement in the office of the Lorain County Bureau of Motor Vehicles on August 15, 2007. The lien is the First lien on the Collateral, which is evidenced by a copy of the title, attached as Exhibit B.

5. The Note and Security Agreement were transferred as follows:

On July 12, 2007 from Tri County Cars Inc. to Credit Acceptance Corporation. The transfer is evidence on Exhibits A & B.

6. The value of the Collateral is \$6,975.00. This valuation is based on NADA.

7. As of the date of this Motion, there is currently due and owing on the Note the outstanding balance of \$13,369.22, plus interest accruing thereon at the rate of 23.90% per annum [\$n/a per day] from October 8, 2008.

8. Other parties known to have an interest in the Collateral are None.

9. The Movant is entitled to relief from the automatic stay under Sections 362(d)(1) and/or 362(d)(2) for these reason(s):

Debtor has no equity in the Collateral and the Collateral is not needed by the Debtor for its reorganization. Movant believes that the collateral has a value of \$6,975.00. Including the Movant's lien, there are liens in the aggregate amount of \$13,369.22 on the Collateral.

Debtor has failed to provide adequate protection for the lien held by the Movant for the reasons set forth below:

Debtors have surrendered the Collateral to the Movant.

Debtor has failed to make periodic payments to Movant, which unpaid payments are in the aggregate amount of \$3,278.80 through September, 2008.

10. Movant has completed the worksheet attached as Exhibit C.

11. This Motion conforms to the standard form adopted in this District except as follows: **This form has been modified to accommodate a vehicle loan.**

WHEREFORE, Movant prays for an Order from the Court granting Movant relief from the automatic stay of Section 362 of the Bankruptcy Code to permit Movant to proceed under law and for such other and further relief to which the Movant may be entitled.

Respectfully submitted,

/s/Daniel C. Wolters

THEODORE A. KONSTANTINOPOULOS #0065542

LINDSEY HALL #0075152

DANIEL C. WOLTERS #0076521

Attorneys for Creditor

Javitch, Block, & Rathbone

1100 Superior Avenue, 19th Floor

Cleveland, OH 44114-9971

Telephone: (216) 623-0000

Facsimile: (216) 685-3005

ndohbky@jbandr.com

NOTICE OF HEARING

A hearing is scheduled on this Motion for Relief from Stay in Courtroom 2A, Howard M. Metzenbaum U.S. Court House, 201 Superior Avenue, Cleveland, Ohio 44114 at **8:30 a.m., on the 4th day of November, 2008**, to consider any written opposition to such objection, which is filed and served no later than seven (7) calendar days preceding the date scheduled for hearing. If no opposition is filed and served within such time, the Motion may be granted without a hearing.

/s/Daniel C. Wolters

THEODORE A. KONSTANTINOPOULOS #0065542

LINDSEY HALL #0075152

DANIEL C. WOLTERS #0076521

Attorneys for Movant

NOTICE

Now comes Movant, Credit Acceptance Corporation assignee of Tri County Cars Inc., by and through counsel, and hereby waives its right to a preliminary hearing within thirty (30) days upon its Motion for Relief from Stay, as provided for in 11 U.S.C. Section 362(e) of the Bankruptcy Code.

Notice is further given that Plaintiff hereby waives its right to have said matter heard within thirty (30) days.

/s/Daniel C. Wolters

THEODORE A. KONSTANTINOPOULOS #0065542

LINDSEY HALL #0075152

DANIEL C. WOLTERS #0076521

Attorneys for Movant

CERTIFICATE OF SERVICE

I certify that on October 10, 2008, copies of this Motion for Relief from Stay were served via Electronic Service and by ordinary U.S. Mail, postage prepaid, to the persons listed below.

Eric M. McCrann
Amy N. McCrann aka Amy Nicole Holcomb
2000 Stone Path
Lorain, OH 44052

William J. Balena
Attorney for the Debtor
(Electronic Service)

Craig H. Shopneck
Trustee in Bankruptcy
(Electronic Service)

U.S. Trustee's Office
(Electronic Service)

/s/Daniel C. Wolters
THEODORE A. KONSTANTINOPOULOS #0065542
LINDSEY HALL #0075152
DANIEL C. WOLTERS #0076521
Attorneys for Movant

EXHIBIT C

(G63425/gn)

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 08-11888
)	
Eric M. McCrann	)	Chapter 13 Proceedings
Amy N. McCrann aka Amy Nicole Holcomb)	
	)	Judge Pat E. Morgenstern-Clarren
Debtor(s))	

RELIEF FROM STAY/ADEQUATE PROTECTION EXHIBIT AND WORKSHEET

Total indebtedness of debtor(s) on date of filing of this Motion (October 10, 2008):

PRINCIPAL:	\$13,369.22	
INTEREST:	\$0.00	(per day rate \$n/a)
OTHER CHARGES: ¹	\$0.00	
SUBTOTAL INDEBTEDNESS:		\$13,369.22
Less:		
CREDIT DUE DEBTOR(S):		\$0.00
TOTAL INDEBTEDNESS:		\$13,369.22

Arrearages:

BEFORE DATE OF FILING:	\$3,378.80	
AFTER DATE OF FILING: ²	\$0.00	
TOTAL ARREARAGES:		\$3,278.80

Loan Data:

DATE OF LOAN:	July 12, 2007
FACE AMOUNT OF LOAN:	\$9,771.75
(PRINCIPAL/CASH PRICE):	\$11,080.50
CURRENT INTEREST RATE:	23.90%
MONTHLY PAYMENT:	
Amount:	\$330.82
No. of Payments Due:	10
Date of Last Payment:	November 28, 2007

Collateral for the loan is:

1. 1999 Chevrolet Truck S10
- 2.
- 3.

¹ For Chapter 13 cases, an itemization is attached.

² For Chapter 13 cases, a post-petition payment history is attached.

Estimated Market Value of Collateral:

At time of loan:	\$11,080.50
At time of this hearing:	\$6,975.00
Source of Valuation(s):	NADA

Did the Movant make the loan: (Yes/No): **No, Tri County Cars Inc. assigned the loan the Movant of July 17, 2007.**

This Exhibit and Worksheet was prepared by:

/s/Daniel C. Wolters
THEODORE A. KONSTANTINOPOULOS #0065542
LINDSEY HALL #0075152
DANIEL C. WOLTERS #0076521
Attorneys for Creditor
Javitch, Block, & Rathbone
1100 Superior Avenue, 19th Floor
Cleveland, OH 44114-9971
Telephone: (216) 623-0000
Facsimile: (216) 685-3005
ndohbky@jbandr.com

³ If no, a history of each transfer from the original lender is attached.

Debtors have not made a post-petition payment.